IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 433 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHANDULAL @ MUKHI PRAHLADBHAI PATEL

Versus

ADDITIONAL SECRETARY

Appearance:

MR AJ YAGNIK for Petitioner

MR IM PANDYA APP for Respondents

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 29/04/2005

ORAL JUDGEMENT

1. By way of filing this Special Criminal Application, the petitioner has challenged the order passed by the Sub-Divisional Magistrate, Visnagar, on

23.11.2004, externing the petitioner for the period of two years from the District of Visnagar and other adjoining Districts of Mehsana, Patan, Banaskantha, Sabarkantha, Gandhinagar, Ahmedabad City and Ahmedabad (Rural), in exercise of powers conferred upon him, under Section 56(a) of the Bombay Police Act, 1951. The petitioner preferred statutory Appeal against the said order of externment under Section 60 of the Bombay Police Act, 1951. The Appellate Authority, vide order dated 10th March, 2005, modified the order of externment to the extent that the externment of the petitioner was restricted to the District of Mehsana only and remaining Appeal of the petitioner was dismissed. Both orders are challenged in this petition.

2. As per the fact of the case, a show cause notice under Section 59 of the Bombay Police Act, 1951 was issued against the petitioner on 9th of April, 2004 with the allegation that the petitioner was committing offences punishable in Chapters 12, 16 and 17 of the Indian Penal Code, and activities of the petitioner were prejudicial to public order. In the notice, the externing authority relied upon three in-camera statements and 10 criminal cases filed against the petitioner under Sections 4, 5 and 12(a) of the Bombay Prevention of Gambling Act, 1887, and came to the conclusion that the petitioner was ferocious and head strong, and was creating terror and fear in general public. The said notice was replied by the petitioner and the petitioner also submitted certain documents in defence as well as examined defence witnesses. However, after hearing the petitioner, on 23rd of November, 2004, the Sub-Divisional Magistrate, Visnagar, passed the impugned order, under Section 56(a) of the Bombay Police Act, 1951 after relying upon the material placed before him i.e. the cases filed against the petitioner under the Bombay Prevention of Gambling Act and in-camera statements of the witnesses. The said order of the Sub-Divisional Magistrate, Visnagar, as well as the order passed by the Appellate Authority on 10th of March, 2005, modifying to some extent the order of externment and confirming rest of the order, both are challenged in this Petition.

3. Learned Advocate Mr.A.J. Yagnik for petitioner and learned APP Mr.I.M. Pandya for the respondents were heard at length.

4. Though various grounds were pressed into service by the learned Advocate for the petitioner to challenge both the orders as opposed and controverted by learned

APP, it clearly appears that the petition can be examined and disposed of on the sole issue as to whether the order of externment suffers infirmity of non-application of mind by the externing authority to the relevant material placed before him.

5. The undisputed fact taken out from the record reveal that in the Notice dated 9th of April, 2004, the externing authority categorically stated that the petitioner was indulged in the activities of committing offences in Chapters 12, 16 and 17 of the Indian Penal Code. It clearly appears that the externing authority took into consideration in this respect 10 gambling cases filed against the petitioner, which were pending, though the externing authority also took into consideration three in-camera statements. Pertinent it is to note here that, the Notice, by virtue of Section 59 of the Bombay Police Act, 1951, was issued against the petitioner for the activities covered by Section 56(a) of the Bombay Police Act. While going through the order passed by the Externing Authority, it clearly appears that the order was passed within the scope of Section 56(a) of the Indian Penal Code, but the externing authority took into consideration 10 cases filed against the petitioner under the Bombay Prevention of Gambling Act, 1887. Thus, there appears clear contradiction in show cause notice in respect of the scope of Section 56(a) and (b) of the Bombay Police Act, 1951.

6. Needless it is to say that, the consequence of action under Section 56(a) or (b) restricts the movement of a citizen and, therefore, this proceeding should be conducted carefully and in accordance with law and therefore to safeguard, Section 59 of the Bombay Police Act is enacted, to issue show cause notice disclosing the specific grounds on which an order for externment is proposed to be passed. The vagueness of the statement in the Notice undoubtedly causes prejudice to the defence and liberty of the externee. From the facts obviously it clearly appears that the Notice is styled as a Notice under Section 56(a) of the Bombay Police Act, but it contains all the ingredients of Section 56(b) of the Bombay Police Act, 1951. Again it is an established fact on record that when the order of externment was passed in exercise of powers under Section 56(a) of the Bombay Police Act, while mandatory Notice under Section 59 clearly makes averments of the grounds of section 56(b) of the Bombay Police Act. This contradiction reveals non-application of mind on the part of the externing authority, the orders under challenge i.e. order passed by the Sub-Divisional Magistrate, Visnagar, as well as

order passed by the Appellate Authority, both are required to be quashed and set aside on this ground alone.

8. In the result, the petition is allowed. The order passed by the Externing Authority - Sub-Divisional Magistrate, Visnagar, directing externment of the petitioner from the District of Visnagar and other adjoining Districts of Mehsana, Patan, Banaskantha, Sabarkantha, Gandhinagar, Ahmedabad City and Ahmedabad (Rural) for the period of two years and the order dated 10th of March, 2005, passed by the Appellate Authority, modifying the order of the Externing Authority to the extent that the externment of the petitioner was restricted to the District of Mehsana only and the remaining Appeal of the petitioner was dismissed, are hereby quashed and set aside. Rule made absolute. DS permitted.

(J.R. Vora, J.)

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